

Article - State Finance and Procurement

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§5A–325.

(a) (1) To the extent feasible, a State unit that submits a request or is otherwise responsible for a capital project shall consult with the Director to determine whether the project will adversely affect any property listed in or eligible for listing in the Historic Register.

(2) The consultation shall occur:

(i) before the State unit submits a request for the capital project to the Department of Budget and Management under § 3–602 of this article;

(ii) before or as part of the final project planning phase for a major transportation capital project as defined in § 2–103.1 of the Transportation Article; or

(iii) as early in the planning process as possible for a capital project that uses nonbudgeted money and is subject to the reporting requirements of § 3–602 of this article.

(b) (1) State units that own or control properties may consult with the Director to develop plans or interagency agreements to identify, evaluate, and manage any of those properties that are listed in or eligible to be listed in the Historic Register.

(2) Capital projects undertaken in accordance with a plan approved by the Trust or an interagency agreement are not subject to further review under this section.

(c) (1) This subsection applies to a capital project that:

(i) is not being carried out by a State unit;

(ii) uses the proceeds of State general obligation bonds; and

(iii) is not otherwise reviewed by the Trust under this section.

(2) Before the Board of Public Works may approve the use of bond proceeds for the project, the Department of Budget and Management or another State unit responsible for the project shall consult with the Director to determine whether

the project will adversely affect any property listed in or eligible to be listed in the Historic Register.

(d) (1) Within 30 days after a State unit notifies the Director of a proposed capital project under this section, the Director shall determine whether the project would adversely affect any property listed in or eligible to be listed in the Historic Register.

(2) If the Director finds that the proposed capital project would have a significant adverse effect on a listed or eligible property, the Director and the State unit shall consult to determine whether a practicable plan exists to avoid, mitigate, or satisfactorily reduce the adverse effect.

(3) If the Director and the State unit cannot agree on a plan, the State unit shall submit to the Council a report of the consultations and the findings and recommendations of the State unit.

(4) Within 30 days after receiving the report, the Council shall submit to the State unit comments:

(i) accepting the adverse effect; or

(ii) recommending practicable alternatives to avoid, mitigate, or satisfactorily reduce the adverse effect.

(5) The State unit may:

(i) incorporate in the project the alternatives recommended by the Council; or

(ii) disagree with the comments of the Council.

(6) If the State unit disagrees with the comments of the Council, the State unit:

(i) shall respond in writing to the Council, explaining why the State unit refuses to adopt the measures included in the comments of the Council; and

(ii) may not proceed with the project for at least 10 working days after responding.

(e) Except for the cost of studies and surveys, a State unit may include the capital costs of preservation activities required under this subtitle as eligible project costs of any project undertaken or financed by the State unit.

(f) The Trust shall adopt regulations that establish procedures and standards for:

(1) administrative review and comment under this section, including time frames for Trust action by the Trust or the Director on specific categories of projects;

(2) exempting specific projects, categories of projects, or categories of programs from any requirement of this section, if the exemption is found to be consistent with the purposes of this subtitle and the best interests of the State, considering the magnitude of the exemption and the risk of impairing historic properties; and

(3) participation by State units, political subdivisions, private organizations, and other entities in proceedings under this section that may affect their interests.

(g) In accordance with regulations adopted under subsection (f) of this section, this section may be applied to any undertaking that is subject to the National Historic Preservation Act, 54 U.S.C. § 306108.

(h) Failure by a State unit to comply with this section does not create a private cause of action under State law.

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